

IN UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

FEB 06 2023

ESTHER DARNELL,

Pro Se Plaintiff

V.

DRUG ENFORCEMENT ADMINISTRATION,
ET AL

Defendants

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Nathan Ochener, Clerk of Court

Civil No. 4:20-cv-4143

JURY

**PLAINTIFF'S RESPONSE TO (ECF 85) DEFENDANT'S MOTION TO STRIKE
PLAINTIFF'S EXPEDITED MOTION FOR RULE 37 (b)(2)(A) ORDER FOR DEFAULT
JUDGMENT FOR DEFENDANTS' FAILURE TO COMPLY WITH COURT'S ORDER**

PLAINTIFF ESTHER DARNELL'S DECLARATION:

I, Esther Darnell, make this declaration on the basis of personal knowledge and information available to me. I, Esther Darnell, declare and state the following:

On January 13, 2023, Plaintiff filed an Expedited Motion for a Rule 37(b)(2)(A)(vi) Default Judgment Against Defendants or Alternatively, a Rule 37(b)(2)(A)(iv), Staying of All Proceedings until the Court's Order is Obeyed by Defendants. ECF 83. On February 1, 2023, Plaintiff filed a Brief in Support of Rule 37 (b)(2)(A). ECF 84. On February 3, 2023, Defendant filed a Motion to Strike Plaintiff's Expedited Motion for Rule 37(B)(2)(A) Default Judgment for Failure to Obey Court's Order. ECF 85.

Plaintiff respectfully requests the Court to deny Defendant's Motion to Strike Plaintiff's Motion for Rule 37(b)(2)(A)(vi) Default Judgment for failure to obey Court's order.

Plaintiff followed the Court's local rules on how to resolve discovery disputes.

First and foremost, Defendant's Motion to Strike contains a false statement, "Plaintiff failed to include a certificate of conference means that it should be automatically struck."

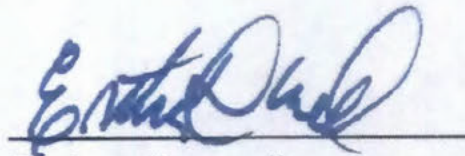
Plaintiff included a *Certificate of Conference, first paragraph on page 8, Plaintiff's Expedited Motion for Rule 37 Default Judgment, ECF 83.* The Certificate of Conference states that "I certify that I requested a conference with Defendant on December 22, 2022, via a written request when I signed the receipt for the incomplete discovery. To date, I have not received a response from Defendant." ECF 83, page 8.

In addition, Plaintiff personally appeared at 11:10am on December 22, 2022, in Defendant Assistant United States Attorney (AUSA) Ariel Wiley's office. Plaintiff was stopped at the x-ray machine and not allowed to proceed. Plaintiff asked Security Guard to meet with Ms. Wiley (per email she was not in the office). The Security Guard gave Plaintiff the discovery records. Plaintiff then left with the Security Guard a written request on the acknowledgment receipt asking for the missing discovery documents. On the acknowledgment receipt Plaintiff asked Ms. Wiley, "Will you please give to me what is in my First Request for Production." Next to Plaintiff's signature on the acknowledgement receipt Plaintiff wrote "signed with objection." Plaintiff was very concerned about substantial number of missing requested discovery documents and asked the Security Guard to make sure Ms. Wiley contacts Plaintiff and also to make sure Ms. Wiley received the acknowledgement receipt. *See attached Exhibit A, Acknowledgement of Receipt of Documents.*

Ms. Wiley did not contact Plaintiff. This was not the first time AUSA Wiley did not confer with Plaintiff. Please note that in **Plaintiff's December 19, 2022, Response to Defendant's Request for a Discovery Hearing, ECF 81, pages 2 and 3, Plaintiff stated that DEA Defendants' Counsel (AUSA Wiley) violated your Honorable Magistrate Judge**

Christina A. Bryan's Court Procedures, Section IV Discovery Disputes, page 4, when AUSA Wiley did not meet and confer with Plaintiff, per email request from Plaintiff to AUSA Wiley dated December 8, 2022, for a meet and confer. While Plaintiff was waiting to hear from AUSA about her request for a meet and confer, AUSA Wiley used the time to rush and file a request for a discovery hearing, before Plaintiff filed her Motion to Compel discovery against Defendants. *Email from Plaintiff to AUSA Wiley dated December 8, 2022, for a meet and confer. See attached Exhibit B, pages 2 and 3.*

Respectfully submitted,



Esther Darnell

Pro Se Plaintiff

1110 Sage Gale Drive

Houston, Texas 77089

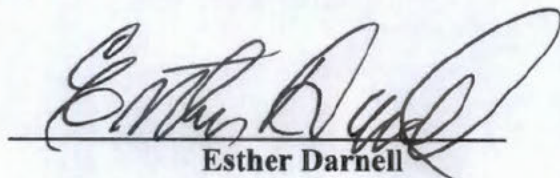
Email: edarnell2002@yahoo.com

Cell phone: 832-651-5226

I hereby make this declaration in lieu of oath, as permitted by Section 1746 of Title 28 of the United States Code. I hereby declare and affirm, under penalty of perjury, that the information contained in this declaration is true and correct to the best of my knowledge.

Date:

2/6/23

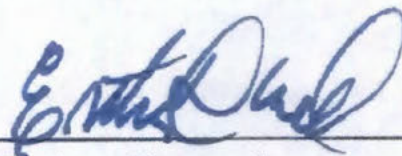


Esther Darnell

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2023, I filed this document, via process server. I also emailed a copy to the Assistant United States Attorney Ariel N. Wiley's email address: ariel.wiley@usdoj.gov.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Esther Darnell", is written over a horizontal line.

Esther Darnell

Pro Se Plaintiff

11110 Sage Gale Drive

Houston, Texas 77089

Email: edarnell2002@yahoo.com

Cell phone: 832-651-5226

**IN UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ESTHER DARNELL,

Pro Se Plaintiff

V.

**DRUG ENFORCEMENT ADMINISTRATION,
ET AL**

Defendants

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Civil No. 4:20-cv-4143

JURY

ORDER

Defendants', Drug Enforcement Administration, et al, Motion to Strike Plaintiff's Motion for Expedited Federal Rules of Procedure Rule 37 (b)(2)(A) Default Judgment for Failure to obey Court's Order (ECF85) is denied.

Signed at Houston, Texas on _____, 2023.

CHRISTINA A. BRYAN
UNITED STATES MAGISTRATE JUDGE

ACKNOWLEDGEMENT OF RECEIPT OF DOCUMENTS

The undersigned for and on behalf of Esther Darnell, hereby acknowledges the receipt of the paper copy of the following documents pertaining to ^{old case} 4:20-cv-04143, Esther Darnell v. Department of Justice (Drug Enforcement Administration), from the United States Attorney's Office, Southern District of Texas, 1000 Louisiana, Suite 2300, Houston, Texas 77002:

- This is the old administrative case*
- Will you please give me what is on my First Request For Production*
- not on request for discovery*
- ☒ 000001-000197 - Darnell -- ROI.pdf ✓
 - ☒ 000198-000450 - Darnell -- Agency's Motion for Summary Judgment.pdf ✓ //
 - ☒ 000451-000462 - Darnell -- Agency's Opposition to Appeal.pdf //
 - ☒ 000463-000477 - Darnell -- Agency's Reply in Support of Summary Judgment.pdf //
 - ☒ 000478-000862 - Darnell -- Agency's Response to Appeal to OFO.pdf //
 - ☒ 000863-000873 - Darnell -- Agency's Response to Complainant's Appeal 9.7.18.pdf //
 - ☒ 000874-000879 - Darnell -- Appeal to OFO.pdf //
 - ☒ 000880-000972 - Darnell -- Complainant's Opposition to Summary Judgment.pdf //
 - ☒ 000973-001017 - Darnell -- Final Agency Decision from CAO.pdf //
 - ☒ 001033-001035 - Darnell -- OFO Decision on Reconsideration.pdf //
 - ☒ 001036-001042 - Darnell -- OFO Decision.pdf //
 - ☒ 001043-001077 - Darnell -- Order Granting Summary Judgment.pdf //
 - ☒ 001078-001278 - Darnell -- Statement in Support of Appeal.pdf //
 - ☒ 001293-001294 - Darnell -- 7.pdf #7 //
 - ☒ 001295-001305 - Darnell -- 8 and 9.pdf //
 - ☒ 001306-001314 - Darnell -- 11.pdf //
 - ☒ 001315-001332 - Darnell -- 12.pdf //
 - ☒ 001333-001345 - Darnell -- 13 Additional.pdf //
 - ☒ 001346-001347 - Darnell -- 13.pdf //
 - ☒ 001348-001351 - Darnell -- 14.pdf //

Signature

Printed Name

Date & Time

Phone Number

Address

Esther Darnell
4:20-cv-4143
Exhibit No. A
Page 1 of 1

From: Esther Darnell

Sent: Thursday, December 8, 2022 12:03 PM

To: Wiley, Ariel (USATXS)

Subject: Expedited Motion to Compel and Stay on Completion Date for Discovery and Expert Witness Deadlines Meet and Confer

Good morning Ms. Wiley,

I am working on the above and will file today. In all honesty, I do not want to file an expedited motion to compel but I have accepted a CD from you when you told me I would be able to access discovery records with the password and I and a computer examiner, whose hourly rate is \$250, could not access the records. *If the password would have worked, I would not be in the position I am in right now.* Also, your third offer, which is the most reasonable of the three, was made at the last hour when I only had a few days left on the expert witness deadline. I wish you would have made it earlier. I feel I must do this because I have lost valuable time and money in my discovery period trying to get discovery records, which is very strange to me. My deposition prices are double because I need a rush job. I am seeking a stay on the dates for completion of discovery and the expert witness deadlines until a decision has been made on the Motion to Compel. I am fully aware of the fact that the Court said no more extensions for me but I will try again because I have no choice and I never had the records to give to the expert to do the report, which is not my fault. Also, AUSA Rodriguez who set the docket dates without my knowledge and input, gave me only 25 days to complete the expert report and himself 71 days. I asked for an extension to correct his unfair setting of the dates. Once a decision is made on Motion to Compel I will ask for an extension of two weeks for the expert witness and 4 or 5 weeks for the completion of discovery. As of today, the discovery records are seven weeks late. I will include this narrative in my Motion to Compel. I am really so sorry I am having to do this. Will you please give me your input immediately? Thank you.

Best regards,

Esther Darnell

Pro Se Plaintiff

11110 Sage Gale DR

Houston, TX 77089

Tel: (832) 651-5226

edarnell2002@yahoo.com

Sent from Mail for Windows

Exhibit B
420 CV 4143
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